

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 203.2, 203C.5, and 203D.4, the Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to amend Chapter 90, “State Licensed Warehouses and Warehouse Operators,” Chapter 91, “Licensed Grain Dealers,” Chapter 92, “Participation in Grain Indemnity Fund,” Chapter 93, “Grain Indemnity Fund Board—Organization and Operations,” and Chapter 94, “Claims Against the Grain Depositors and Sellers Indemnity Fund,” Iowa Administrative Code.

The proposed amendments conform the rules on grain transactions involving grain dealers and warehouse operators to reflect changes made by 2010 Iowa Acts, Senate File 2299, by replacing the annual fee paid by grain dealers and warehouse operators with a participation fee. The annual warehouse participation fee changed generally from \$2.75 per 5,000 bushels of capacity to fourteen thousandths of a cent per bushel of licensed storage capacity with a limit of \$500. The annual grain dealer participation fee changed generally from \$500 to fourteen thousandths of a cent per bushel of grain purchased.

Any interested person may make written suggestions or comments on the proposed amendments on or before November 9, 2010. Written comments should be addressed to Margaret Thomson, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319. Comments may be submitted by fax to (515)281-6236 or by E-mail to Margaret.Thomson@IowaAgriculture.gov.

These proposed amendments are subject to the Department’s general waiver provision.

These amendments are intended to implement 2010 Iowa Acts, Senate File 2299.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definitions in rule **21—90.2(203C)**:

“*Generally accepted accounting principles*” means accounting principles generally accepted in the United States of America, in accordance with the U.S. Financial Accounting Standards Board, or international financial reporting standards, in accordance with the International Accounting Standards Board.

“*Indemnity fund*” means the Iowa grain depositors and sellers indemnity fund created in Iowa Code chapter 203D.

ITEM 2. Amend rule 21—90.4(203C) as follows:

21—90.4(203C) Application for a warehouse operator license. Application to operate a licensed warehouse (Iowa Code chapter 203C) shall be made to the bureau on forms prescribed for that purpose by the bureau. Forms are available from the bureau upon request. All information required by Iowa Code section 203C.7 shall be furnished. The bureau may require the applicant to file updated information if the information on the application is no longer current. The application, insurance certificate, financial statement, tariff, license fee, indemnity fund fee and background information on a person applying for the license and on the managers shall be on file before a license is issued. The bureau chief may require an inspection of the proposed facilities prior to the issuance of a warehouse operator license.

This rule is intended to implement Iowa Code sections 203C.6, ~~and~~ 203C.7, 203C.12, 203C.15, 203C.28 and 203C.33, 2009 Iowa Code Supplement section 203D.3 as amended by 2010 Iowa Acts, Senate File 2299, and 2010 Iowa Acts, Senate File 2299, section 8.

ITEM 3. Amend subrule 90.5(2) as follows:

90.5(2) *Surrender of license.* The license shall be surrendered to the bureau immediately upon ~~termination~~, cancellation, suspension, or revocation of such license.

ITEM 4. Amend rule 21—90.7(203C) as follows:

21—90.7(203C) *Renewal, ~~termination~~ expiration and reinstatement of license—payment of license fee.*

90.7(1) *Renewals.* The bureau shall send to each licensed warehouse operator written notice that the application, ~~and the license fee and the indemnity fund fee~~ for annual renewal of the warehouse operator license shall be received in accordance with Iowa Code section 203C.37. If the bureau does not receive the application and ~~fee fees~~ by the due date, the license shall ~~be terminated~~ expire. A license that has ~~been terminated~~ expired may be reinstated within 30 days of the date of ~~termination~~ expiration conditioned on the applicant's meeting all statutory requirements and by the bureau's receipt of the following within 30 days of the ~~termination~~ expiration:

- a. Completed application;
- b. License ~~fee~~; and indemnity fund fees; and
- c. The reinstatement fee prescribed in Iowa Code section 203C.33.

90.7(2) No change.

This rule is intended to implement Iowa Code sections 203C.33 and 203C.37.

ITEM 5. Amend subrule 90.8(2), introductory paragraph, as follows:

90.8(2) *Financial statement requirements.* Financial statements filed pursuant to subrules 90.8(1), 90.8(3), 90.8(4) and 90.8(11) shall be prepared in accordance with generally accepted accounting principles ~~generally accepted in the United States~~ and shall comply with either of the following:

ITEM 6. Amend paragraph **90.8(9)“a”** as follows:

a. Corporations, limited liability companies and partnerships. When the bureau determines the net worth for corporations, limited liability companies and partnerships, related party assets that require financial disclosure per financial accounting standards shall be disallowed. These assets shall be excluded unless the licensee can show the ~~department~~ bureau sufficient documentation to ~~explain why these assets should be allowed~~ assure the bureau that the assets are collectible.

ITEM 7. Amend paragraph **90.11(1)“b”** as follows:

b. Change in name or business address of a warehouse or warehouse operator.

ITEM 8. Amend subrules 90.13(4) and 90.13(5) as follows:

90.13(4) *Surrender of warehouse receipts on cancellation, ~~termination~~ expiration, suspension or revocation of license.* When a warehouse operator license has expired or is canceled, ~~terminated~~, suspended or revoked, all unused warehouse receipts under such license shall be surrendered to the bureau.

The bureau shall notify the warehouse operator that all outstanding warehouse receipts shall be returned to the bureau's office no later than 120 days from the date of cancellation, ~~termination~~ expiration, or revocation of the license.

90.13(5) *Purchase or return of grain, replacement receipt issued, or cancellation of outstanding receipts, upon cancellation, ~~termination~~ expiration, or revocation of warehouse operator license.* When a warehouse operator license has expired or is canceled, ~~terminated~~, or revoked, all stored grain shall be either purchased and payment made, or returned within 30 days to the holders of warehouse receipts or unpriced scale tickets, except when the warehouse is continuing operation under new ownership or when storage obligations are assumed by another licensee. Upon completion of delivery to the receipt holder or the reissuance of the receipt under a new license, the warehouse operator shall immediately mark “canceled,” sign or initial and date such receipt on the face of the original copy, and forward such receipt to the bureau's office to be stamped with the department's cancellation stamp. When the storage obligations are assumed by a new licensee from a warehouse whose license is expired or has been canceled, ~~terminated~~, or revoked, replacement warehouse receipts shall be issued.

ITEM 9. Amend rule 21—90.14(203C), introductory paragraph, as follows:

21—90.14(203C) Lost or destroyed receipt. If a warehouse receipt is lost or destroyed, one of three methods shall be used in canceling the receipt. The following procedures shall be adhered to:

ITEM 10. Amend subrule 90.14(1) as follows:

90.14(1) Depositor's lost warehouse receipt release. If the depositor or warehouse receipt holder has lost the receipt and is either selling all of the grain to the warehouse operator or removing all of the grain from storage, a Lost Warehouse Receipt Release shall be used. The release shall be completed in duplicate and signed by the receipt holder and shall be notarized. Both copies shall be retained in the warehouse records in lieu of the original copy of the receipt, which shall be given to the bureau at the time of an examination. One copy of the release shall be filed with the bureau at the time of an examination.

ITEM 11. Amend subrule 90.15(1) as follows:

90.15(1) Warehouse receipt forms. Warehouse receipt forms shall be 8.25 inches wide by 7 inches long or 8.5 inches wide by 11 inches long and shall be printed in not less than triplicate. The original receipt shall be white, and the weight of the paper shall not be less than 20-pound base; the warehouse operator's copy shall be yellow and the weight of the paper shall not be less than 16-pound base; and the owner's copy shall be green and the weight of the paper shall not be less than 16-pound base. Receipts issued for bulk grain and receipts issued for agricultural products other than bulk grain shall be in a form prescribed by the department. The bureau shall have control over the printing of warehouse receipts.

ITEM 12. Amend paragraph **90.15(3)“e”** as follows:

e. Provisions to cease issuing electronic warehouse receipts. Upon notice by the department that a warehouse operator license issued under Iowa Code chapter 203C has expired or has been terminated, canceled, suspended or revoked, a provider shall prohibit the warehouse operator from issuing any electronic warehouse receipts until further notice from the department.

ITEM 13. Amend subrule 90.16(1) as follows:

90.16(1) Application of tariff. The tariff rates applicable to stored products shall be those as contained in the tariff on file with the bureau at the time the product is received for storage. The tariff rates shall be applicable on an annual basis from date of deposit. If a tariff is amended, the charges shall be applied in accordance with subrule 90.16(3). Tariff charges shall cease upon cancellation, ~~termination~~ expiration, or revocation of a warehouse operator license. Tariff charges shall continue in accordance with the rates as filed by the successor warehouse operator. In the determination of the applicable rates to be applied under the successor warehouse operator's tariff, the date of deposit under the new tariff shall be the actual date of deposit. No charges shall apply to grain held for less than 30 days and for which no warehouse receipt has been issued unless the warehouse operator has a posted policy which provides for a shorter time period.

ITEM 14. Amend subrule 90.17(7) as follows:

90.17(7) Retention of records. All records shall be kept for a period of not less than six years. Such records shall be kept for the stated time period even if a license has expired or has been canceled, ~~terminated~~ or revoked.

ITEM 15. Amend rule 21—90.20(203C) as follows:

21—90.20(203C) Monthly grain statements. A grain statement shall be prepared at the close of business at the end of each calendar month and filed with the bureau by the tenth of the following month. This grain statement shall be on a form or in a format prescribed by the bureau, ~~which~~. The bureau shall be furnished furnish forms to the warehouse operator upon request. A grain statement shall be filed for each calendar month regardless of whether or not the warehouse operator has products in storage.

This rule is intended to implement Iowa Code section 203C.2.

ITEM 16. Amend rule 21—90.23(203C), introductory paragraph, as follows:

21—90.23(203C) Storing of products. Bulk grain in storage shall be stored in such a manner that the amount of grain in the storage facility can be readily determined. ~~The warehouse operator may be required to level the grain before completion of the examination if the amount of bulk grain in a storage facility cannot be readily measured by the examiner.~~ A product other than bulk grain shall be stored in such a manner that it can be readily inspected and the amount and kind thereof determined. The maintenance, conditioning, care, or surveillance shall be given to stored products as is required to maintain the quality, grade, and safe storage of the products. Nothing shall be placed or stored in a licensed facility that will in any way contaminate the stored products or cause any degrading of grade or value. Storage facilities shall not be overfilled. There shall be sufficient overhead airspace to provide adequate ventilation and to allow the examiner to readily determine the quality and quantity of the grain. The bureau chief may require the installation of overhead ventilation fans in facilities when in the bureau chief's judgment such fans are needed to preserve the quality of stored products. The bureau chief may require the installation of aeration equipment in storage facilities when it is deemed necessary to preserve the quality of stored products.

ITEM 17. Amend subrule 90.26(1) as follows:

90.26(1) License period. A license for a temporary storage facility may be issued at any time but shall be effective for the storage of grain only from August 1 to May 1 of the following year. A temporary storage facility license shall ~~terminate~~ expire each May 1 unless the licensee requests and obtains an extension in accordance with subrule 90.26(2).

ITEM 18. Amend subrule 90.28(1) as follows:

90.28(1) License period. A license for polyvinyl bag storage space shall be effective from August 1 to May 1 of the following year. A polyvinyl bag storage space license shall ~~terminate~~ expire May 1 unless the licensee requests and obtains an extension in accordance with subrule 90.28(2).

ITEM 19. Amend rule 21—90.31(203C) as follows:

21—90.31(203C) Review proceedings. A warehouse ~~licensee~~ operator or applicant may file a formal written complaint with the department if the licensee or applicant contests any finding or decision of the bureau chief. Any such complaints shall be resolved in contested case proceedings conducted pursuant to the applicable provisions of 21—Chapter 2.

ITEM 20. Adopt the following new definitions in rule **21—91.2(203)**:

“Generally accepted accounting principles” means accounting principles generally accepted in the United States of America, in accordance with the U.S. Financial Accounting Standards Board, or international financial reporting standards, in accordance with the International Accounting Standards Board.

“Indemnity fund” means the Iowa grain depositors and sellers indemnity fund created in Iowa Code chapter 203D.

ITEM 21. Amend rule 21—91.3(203) as follows:

21—91.3(203) Application for a grain dealer license. Application for a grain dealer license (Iowa Code chapter 203) shall be made to the bureau on forms prescribed for that purpose by the bureau. Forms are available from the bureau upon request. All information required by Iowa Code chapter 203 shall be furnished. The bureau may require the applicant to file updated information if the information on the application is no longer current. ~~The background information on a person applying for the license and on the managers must be on file before a license is issued.~~ The application, financial statement, license fee, indemnity fund fee and background information on a person applying for a license and on the managers shall be on file before a license is issued.

This rule is intended to implement Iowa Code sections ~~203.2 and 203.3~~, 203.5 and 203D.3 and 2010 Iowa Acts, Senate File 2299, section 8.

ITEM 22. Amend rule 21—91.6(203) as follows:

21—91.6(203) Surrender of license. The grain dealer license and all unused credit-sale contracts shall be forwarded to the bureau immediately upon cancellation, ~~termination~~ suspension, or revocation of such license. A grain dealer's letter requesting cancellation of the grain dealer license shall also state whether or not there are any unpaid obligations.

This rule is intended to implement Iowa Code sections 203.2, 203.3 and 203.7.

ITEM 23. Amend rule 21—91.7(203), catchwords, as follows:

21—91.7(203) Renewal, ~~termination~~ expiration and reinstatement of license—payment of license fee.

ITEM 24. Amend subrule 91.7(1) as follows:

91.7(1) Renewals. The bureau shall send to each licensed grain dealer written notice that the application, ~~and~~ the license fee ~~and the indemnity fund fee~~ for annual renewal of the grain dealer license shall be received in accordance with Iowa Code section 203.5. If the bureau does not receive the application and ~~fee fees~~ by the due date, the license shall ~~be terminated~~ expire. A license that has ~~been terminated~~ expired may be reinstated within 30 days of the date of ~~termination~~ expiration conditioned on the applicant's meeting all statutory requirements and the bureau's receipt of the following within 30 days of the ~~termination~~ expiration:

- a. Completed application;
- b. License fee ~~and indemnity fund fees~~;
- c. The reinstatement fee prescribed in Iowa Code section 203.6.

ITEM 25. Amend subrule 91.8(2), introductory paragraph, as follows:

91.8(2) Financial statement requirements. Financial statements filed pursuant to subrules 91.8(1), 91.8(3), 91.8(4) and 91.8(11) shall be prepared in accordance with ~~accounting principles~~ generally accepted ~~in the United States~~ accounting principles and shall comply with either of the following:

ITEM 26. Amend paragraph **91.8(9)“a”** as follows:

a. *Corporations, limited liability companies and partnerships.* When the bureau determines the net worth, current assets to current liabilities ratio and total debts to total assets ratio requirements for corporations, limited liability companies and partnerships, related party assets that require financial disclosure per financial accounting standards shall be disallowed. These assets shall be excluded unless the licensee can show the ~~department~~ bureau sufficient documentation to ~~explain why these assets should be allowed~~ assure the bureau that the assets are collectible. If assets are classified as current in the financial statements, the documentation shall also assure that the assets are collectible within one year.

ITEM 27. Amend subrules 91.11(6) and 91.11(7) as follows:

91.11(6) Direct shipment records. When grain is delivered by a producer or the producer's agent to a third party in accordance with an agreement between the producer and the grain dealer and the grain is weighed, at the destination or is custom weighed, the ~~following shall apply:~~

~~a.—The grain dealer shall maintain one copy of every direct shipment scale ticket in daily order as part of the grain records. These scale tickets shall have the name of the producer recorded on them.~~

~~b.—The direct shipment is to be considered an obligation of the grain dealer on the date stated on the destination scale ticket, and the direct shipment shall be reflected in the daily position record on the date when the grain dealer is able to obtain the load weights.~~

~~c.—If the destination weights are transferred to the grain dealer's scale tickets, the tickets shall contain a minimum of the producer's name and the destination scale ticket number and weights.~~

~~d.—A grain dealer who also holds a warehouse operator license may maintain a separate daily position record for each kind of direct shipment grain. The grain dealer shall notify the bureau in writing if the grain dealer elects to maintain such a daily position record.~~

91.11(7) Credit-sale contracts. One copy of every outstanding credit-sale contract shall be maintained in numerical order as part of the records.

a. No change.

b. Notice of credit-sale contract acknowledgment. A licensed grain dealer who purchases grain by credit-sale contract shall obtain from the seller's signature on a notice of credit-sale contract seller a signed acknowledgment, stating that the seller has received notice that grain purchased by credit-sale contract is not protected by the grain depositors and sellers indemnity fund. Failure of the grain dealer to obtain the acknowledgment of the seller is a violation of Iowa Code section 203.15 and may result in license suspension or revocation under Iowa Code section 203.10. Failure of the grain dealer to obtain the acknowledgment does not alter the fact that the seller shall be unable to recover from the grain depositors and sellers indemnity fund any loss incurred under credit-sale contract. The acknowledgment shall comply with one of the following:

(1) Be a separate form, which shall be in a form prescribed by the bureau. The notice shall state that the seller has received notice that the grain is not protected by the grain depositors and sellers indemnity fund. A copy of the notice shall be attached to the grain dealer's copy and seller's copy of the credit-sale contract. Failure of the grain dealer to obtain the acknowledgment of the seller is a violation of Iowa Code section 203.15 and may result in license suspension or revocation under Iowa Code section 203.10. Failure of the grain dealer to obtain the acknowledgment of the seller does not alter the fact that the seller shall be unable to recover from the grain depositors and sellers indemnity fund any loss incurred under the credit-sale contract; or

e. (2) In lieu of obtaining the separate credit-sale acknowledgment form, the The grain dealer may add the following wording to the credit-sale contract directly above the signature of the buyer and seller in bold size print of equal size or larger than the body of the contract: "By their signature hereto, the undersigned aver that the seller has been orally advised by the buyer that this transaction is not covered by the grain depositors and sellers indemnity fund."; or

(3) The grain dealer may add the following wording to the credit-sale contract directly above the signature of the buyer and seller in bold print of equal size or larger than the body of the contract: "By their signature hereto, the undersigned acknowledges that the seller has received notice that this credit-sale transaction is not protected by the grain depositors and sellers indemnity fund."

d. c. If someone other than the seller indicated on a credit-sale contract signs the contract, the grain dealer shall be able to provide the bureau with proof of business relationship between the indicated seller and the person who signed the contract. This document shall be signed by the person who produced the grain or caused the grain to be produced. The document is required for but not limited to contracts signed by the following:

(1) to (7) No change.

If a contract is issued to two or more sellers, all must sign the contract.

e. d. A licensee's purchases of grain by credit-sale contract from a person licensed as a grain dealer in any jurisdiction are not subject to the requirements of 91.11(7). Any grain purchased from a grain dealer is not eligible for recovery from the grain depositors and sellers indemnity fund.

ITEM 28. Amend rule 21—91.12(203) as follows:

21—91.12(203) Assignment of contracts. Upon cancellation, ~~termination~~ expiration, suspension or revocation of the license, credit-sale contracts may be assigned to another grain dealer licensed under Iowa Code chapter 203 unless strictly prohibited in the terms of the credit-sale contract. The assignee shall notify all affected producers in writing of the assignment. A copy of the assignment shall be forwarded to the bureau showing the contracts assigned and to whom they are assigned within 30 days of cancellation, ~~termination~~ expiration, suspension or revocation of the license. All credit-sale contracts shall be paid for or reassigned within 30 days of cancellation, ~~termination~~ expiration, or revocation of the license.

This rule is intended to implement Iowa Code sections 203.2 and 203.15.

ITEM 29. Amend rule 21—91.13(203) as follows:

21—91.13(203) Filing of monthly grain statement and reports. A grain statement shall be prepared at the close of business at the end of each calendar month and filed with the bureau by the tenth of the following month. The grain statement shall be on a form or in a format prescribed by the bureau, ~~and furnished~~ The bureau shall furnish forms to the dealer upon request. A grain statement shall be filed for each calendar month regardless of whether or not the dealer has conducted any business during that period.

The bureau may require the dealer to file other types of reports, and the dealer shall file with the bureau any such report requested by the bureau within the time period as is specified by the bureau.

This rule is intended to implement Iowa Code section 203.2.

ITEM 30. Amend rule 21—91.16(203) as follows:

21—91.16(203) Requirements for Class 2 licensees. A Class 2 licensee whose purchases from producers during the fiscal year exceed \$500,000, and who is thereby required by Iowa Code section 203.3 to apply for a Class 1 license, shall file the application with the bureau within 30 days after the purchases exceed \$500,000. ~~The application shall include the additional \$250 annual assessment for Class 1 licensees required under rule 21—92.2(203D).~~

This rule is intended to implement Iowa Code section 203.3.

ITEM 31. Amend subrule 91.21(2) as follows:

91.21(2) Notice. The bureau shall cause notice of the opening of the claim period to be published once each week for two consecutive weeks in a newspaper of general circulation in each of the counties in which the licensee maintains a business location, and in a newspaper of general circulation in the state. The notice shall state the name and address of the licensee and the claim incurrence date. The notice shall also state that any claims against the bond on account of the licensee shall be ~~sent by certified mail to~~ received by the bureau within 120 days after the incurrence date, and that the failure to make a timely claim relieves the department from liability to the claimant. This notice may be incorporated by the bureau with the notice required by Iowa Code section 203.12.

ITEM 32. Amend subrule 91.23(4) as follows:

91.23(4) Provisions to cease issuing electronic grain contracts. Upon notice by the department that a grain dealer license issued under Iowa Code chapter 203 has expired or has been terminated, canceled, suspended or revoked, a provider shall prohibit the licensee from entering into any electronic grain contracts until further notice from the department. Upon notice by the department that a licensee has had its right to purchase grain by credit-sale contract suspended or denied under rule 21—91.17(203), a provider shall prohibit the licensee from entering into any electronic credit-sale grain contracts until further notice from the department.

ITEM 33. Amend rule 21—92.1(203D) as follows:

21—92.1(203D) Mandatory participation in fund. All grain dealers and ~~state~~ warehouse operators shall participate in the grain depositors and sellers indemnity fund (the fund) through the remission of the fees required in rule 21—92.2(203D). Failure to participate shall result in license suspension or revocation. As used in this chapter, “grain dealer” shall mean a licensed grain dealer pursuant to Iowa Code section 203.3 and “warehouse operator” shall mean a licensed warehouse operator pursuant to Iowa Code section 203C.6. “Licensee” shall mean either a licensed grain dealer or a licensed warehouse operator.

ITEM 34. Amend rule 21—92.2(203D) as follows:

21—92.2(203D) Required fees. Until the amounts are amended or waived by the grain indemnity fund board pursuant to 2009 Iowa Code Supplement section 203D.5 as amended by 2010 Iowa Acts, Senate File 2299, in accordance with Iowa Code chapter 17A, fees shall be assessed as follows:

92.2(1) A per-bushel fee on all purchased grain, in an amount of one-quarter cent per bushel, remitted by ~~the licensee~~ grain dealers. However, if the grain dealer provides documentation satisfactory to the department, the following transactions shall be excluded from the per-bushel fee:

- a. Grain purchased from the United States government or any of its subdivisions or agencies.
- b. Grain purchased from a person licensed as a grain dealer in any jurisdiction.
- c. Grain purchased under a credit-sale contract.

92.2(2) An annual ~~grain dealer/warehouse participation~~ fee, remitted by ~~the licensee~~ licensees, as follows:

a. For Class 1 grain dealers, ~~\$500~~, a participation fee of fourteen thousandths of a cent per bushel on all purchased grain entered into the company-owned paid position during the grain dealer's last fiscal year. However, a grain dealer shall pay a minimum participation fee of \$50. Redemptions of collateral warehouse receipts entered into the company-owned paid position shall not be considered as a purchase.

~~b. For Class 2 grain dealers, \$250.~~

~~e. b.~~ For warehouse operators, a participation fee of fourteen thousandths of a cent per bushel of bulk grain storage capacity, or \$500, whichever is less. However, a warehouse operator shall pay a minimum participation fee of \$50.

~~(1) For intended storage of bulk grain in any quantity less than 20,000 bushels, \$42 plus \$7 for each 2,000 bushels or fraction thereof in excess of 20,000 bushels.~~

~~(2) For intended storage of bulk grain in any quantity not less than 20,000 bushels and not more than 50,000 bushels, \$70 plus \$4.50 for each 3,000 bushels or fraction thereof in excess of 20,000 bushels.~~

~~(3) For intended storage of bulk grain in any quantity not less than 50,000 bushels and not more than 70,000 bushels, \$115 plus \$4.50 for each 4,000 bushels or fraction thereof in excess of 50,000 bushels.~~

~~(4) For intended storage of bulk grain in any quantity not less than 70,000 bushels, \$137.50 plus \$2.75 for each 5,000 bushels or fraction thereof in excess of 70,000 bushels.~~

92.2(3) A grain dealer may pass on the cost of a per-bushel fee paid in accordance with 92.2(1) to the grain sellers by an itemized discount on the grain dealer's settlement sheet.

This rule is intended to implement 2009 Iowa Code Supplement sections 203D.3 and 203D.5 as amended by 2010 Iowa Acts, Senate File 2299.

ITEM 35. Rescind rule 21—92.3(203D) and adopt the following **new** rule in lieu thereof:

21—92.3(203D) New license applicants. Persons applying for a new grain dealer license or warehouse operator license shall pay a full annual participation fee in accordance with 2010 Iowa Acts, Senate File 2299, section 8, and 2009 Iowa Code Supplement section 203D.5 as amended by 2010 Iowa Acts, Senate File 2299. This payment shall be made without regard to whether or not the grain indemnity fund board has otherwise waived or adjusted the per-bushel or participation fees for licenses. Payment of the fees shall be made before a new license is issued. A participation fee paid by an applicant shall be refunded if the license is not issued by the department. A participation fee paid by a grain dealer applicant shall be recalculated by the end of the first state fiscal quarter after completion of the grain dealer's first year of operation. The grain dealer participation fee shall be recalculated based upon all actual purchased grain entered into the company-owned paid position in the dealer's first year of operation. However, redemptions of collateral warehouse receipts entered in the company-owned paid position shall not be considered as a purchase. Underpayments shall be paid by the licensee in accordance with rule 21—92.4(203D) and overpayments shall be refunded by the department.

This rule is intended to implement 2010 Iowa Acts, Senate File 2299, section 8, and 2009 Iowa Code Supplement section 203D.5 as amended by 2010 Iowa Acts, Senate File 2299.

ITEM 36. Amend rule 21—92.4(203D) as follows:

21—92.4(203D) Due date for payment of the per-bushel fee.

92.4(1) Quarterly payments. The per-bushel fee and the participation fee installment payment established in ~~Iowa Code section 203D.3~~ 2010 Iowa Acts, Senate File 2299, section 8, as adjusted

by rule 21—92.2(203D), and the quarterly report are due, except as provided in subrule 92.4(2), on the fifteenth day of the calendar fiscal month succeeding the calendar fiscal quarter in which the fee accrued. The calendar fiscal quarters are as follows: January 1 through March 31; April 1 through June 30; July 1 through September 30; and October 1 through December 31; January 1 through March 31; and April 1 through June 30.

92.4(2) *Payments for licensees out of business.* If a state grain dealer or warehouse operator license has expired or is revoked, terminated, or canceled during the term of a calendar fiscal quarter, the quarterly report and per-bushel fee for that quarter are due 15 days after the date of license expiration, revocation, termination, or cancellation.

92.4(3) *Holidays.* If the due date determined under subrules 92.4(1) and 92.4(2) falls on a Saturday, Sunday, a legal holiday as provided in Iowa Code section 4.1(34), or a Monday following a Sunday which is a named legal holiday, the due date is the following day.

92.4(4) *Forms and payment.* The quarterly report shall be submitted on forms or in a format prescribed and by the bureau. Required forms shall be provided by the grain warehouse bureau. The amount of the per-bushel fee, as calculated in the quarterly report, shall accompany the report. Checks shall be made payable to the Iowa Department of Agriculture and Land Stewardship (abbreviated as IDALS).

92.4(5) No change.

This rule is intended to implement 2009 Iowa Code Supplement section 203D.3 as amended by 2010 Iowa Acts, Senate File 2299, and 2010 Iowa Acts, Senate File 2299, section 8.

ITEM 37. Amend rule 21—92.5(203D) as follows:

21—92.5(203D) Penalty for delinquent submission of per-bushel fee quarterly fees.

92.5(1) *Delinquent payments defined.* In regard to the submission of the quarterly report, and per-bushel fee and the participation fee installment payment, the licensee is deemed to be delinquent if any of the following apply:

a. to c. No change.

d. The participation fee installment payment is not received on or before the due date.

92.5(2) *Penalty amount.* The amount of penalty for a delinquent submission is the lesser of the amount of the deficiency or \$10 per day for each day after the due date for the quarter in question, through the earlier of the date the underpayment is received or the date the licensee's license has expired or has been revoked or canceled. However, a delinquent payment is subject to a minimum penalty amount of \$10.

92.5(2) 92.5(3) *Penalty when no assessment is due.* If the licensee is delinquent because the quarterly report is not received until after the due date, but no per-bushel fee was due for that quarter, there is a one-day penalty of \$10.

92.5(3) 92.5(4) *License suspension and revocation for failure to pay.* If the delinquency is not cured within 30 days after the due date, the grain dealer's or warehouse operator's license shall be suspended. If the delinquency is not cured within 30 days after suspension, the license shall be revoked.

92.5(4) 92.5(5) *Overpayments.* If, upon review of the quarterly report, the grain warehouse bureau determines that there has been an overpayment of \$1 or more, the bureau shall issue a credit to the licensee which may be applied against the amount of assessment due in succeeding quarters. Overpayments of less than \$1 are negated.

This rule is intended to implement Iowa Code section 203D.3 and 2010 Iowa Acts, Senate File 2299, section 8.

ITEM 38. Amend subrule 92.6(3) as follows:

92.6(3) *Penalty amount.* If the licensee is delinquent, the penalty is the lesser of the amount of the deficiency or \$10 per day for each day after the due date for the quarter in question, through the earlier of the date the underpayment is received or the date the licensee's license is has expired or has been revoked, terminated, or canceled. However, a delinquent payment is subject to a minimum penalty amount of \$10.

ITEM 39. Amend rule **21—92.6(203D)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section 203D.3 and 2010 Iowa Acts, Senate File 2299, section 8.

ITEM 40. Amend rule 21—93.2(203D) as follows:

21—93.2(203D) The board. The grain indemnity fund board consists of seven members: the secretary of agriculture or the secretary's designee who shall serve as chairperson, ~~the commissioner of insurance or the commissioner's designee who shall serve as secretary~~, the state treasurer or the state treasurer's designee who shall serve as treasurer, a representative of the banking industry and four representatives of the grain trade (two producers and two operators) industry. Grain industry representatives shall consist of two grain producers, one representative of warehouse operators licensed in accordance with Iowa Code section 203C.6 and one representative of grain dealers licensed in accordance with Iowa Code section 203.3. Each industry representative shall be appointed by the governor from a list of three nominees made by the secretary of agriculture.

This rule is intended to implement Iowa Code section 203D.4.

ITEM 41. Amend rule 21—93.3(203D) as follows:

21—93.3(203D) Authority of the board. The board has authority to determine the amount and validity of claims made against the fund, to review and adjust the per-bushel fee and the ~~dealer-warehouse grain dealer and warehouse operator participation~~ fee, and to approve costs of administering the fund. In addition, the board has the authority to act as an advisor to the secretary of agriculture on administrative matters affecting the fund, and as a result the board will make only policy recommendations in regard to the areas of administration delegated to the department in Iowa Code chapter 203D.

This rule is intended to implement Iowa Code section 203D.4.

ITEM 42. Amend subrule 93.4(2) as follows:

93.4(2) General conduct of meetings. The chairperson, ~~or secretary in the absence of the chairperson~~, presides at all board meetings. Only individuals recognized by the presiding officer may address the board; in general, Robert's Rules of Order will govern the meeting unless otherwise stated in this chapter or by special action of the board.

In all discussions before the board, members of the public shall address any questions for the board to the presiding officer. Individual questioning of board members will not be allowed without the explicit consent of the presiding officer and the board members in question.

ITEM 43. Amend rule 21—93.5(203D) as follows:

21—93.5(203D) Minutes. The minutes of all board meetings are recorded and kept by the ~~secretary grain warehouse bureau~~ in the board's office.

This rule is intended to implement Iowa Code section 203D.4.

ITEM 44. Amend rule 21—93.8(203D) as follows:

21—93.8(203D) Waiver of per-bushel and annual grain dealer and warehouse operator fees. Pursuant to 2009 Iowa Code Supplement section 203D.5 as amended by 2010 Iowa Acts, Senate File 2299, the per-bushel and the annual grain dealer and warehouse operator fees are suspended ~~and waived effective July 1, 1988~~, until reinstated by rule or statute. ~~This waiver applies to all fees which would have accrued on or after July 1, 1988.~~ To this extent, this rule supersedes rules 21—92.2(203D) and 21—92.4(203D). ~~However, this rule does not waive any fees or penalties which accrued before July 1, 1988, including annual fees which became due and payable on or before June 30, 1988. Penalties on delinquent per-bushel fees arising prior to July 1, 1988, shall continue to run until the delinquency is cured.~~ Further, this rule does not alter the requirement of ~~Iowa Code section 203D.3(4)~~ 2010 Iowa Acts, Senate File 2299, section 8, that new licensees must pay the annual grain dealer and warehouse

operator fees for the first year, as set out in ~~Iowa Code section 203D.3~~ 2010 Iowa Acts, Senate File 2299, section 8, and in rule 21—~~subrule 92.2(2)~~ 92.3(203D).

This rule is intended to implement Iowa Code sections 203D.3; and 203D.4 and 2009 Iowa Code Supplement section 203D.5 as amended by 2010 Iowa Acts, Senate File 2299.

ITEM 45. Adopt the following **new** definitions in rule 21—**94.1(203D)**:

“*Credit-sale contract*” means a contract for the sale of grain pursuant to which the sale price is to be paid more than 30 days after the delivery of the grain to the buyer, or a contract which is titled as a credit-sale contract, including but not limited to those contracts commonly referred to as deferred-payment contracts, deferred-pricing contracts, and price-later contracts.

“*Department*” means the Iowa department of agriculture and land stewardship.

“*Licensed warehouse*” means a warehouse, the operation for which the department has issued a license in accordance with Iowa Code section 203C.6.

“*Warehouse receipt*” means a warehouse receipt issued for bulk grain in accordance with Iowa Code chapter 203C.

ITEM 46. Amend rule 21—**94.1(203D)**, definition of “Warehouse operator,” as follows:

“*Warehouse operator*” ~~shall mean~~ **means** a licensed warehouse operator pursuant to Iowa Code section 203C.6.

ITEM 47. Amend rule 21—94.2(203D) as follows:

21—94.2(203D) By whom claims can be made. Claims shall be made only by a depositor or seller. Claims shall derive from a covered transaction. A claim shall not be made on grain which was initially eligible as a covered transaction but became not covered as a result of a new credit-sale contract transaction, as defined by rule 21—92.3(203D).

ITEM 48. Amend rule 21—94.4(203D) as follows:

21—94.4(203D) Time limitations. A claim against the fund may be made ~~anytime after the earlier of the license revocation, termination, or cancellation of a grain dealer’s or warehouse operator’s license or the grain dealer’s or warehouse operator’s filing a petition for bankruptcy.~~ for a covered transaction when either of the following incurrence dates occurs:

1. The expiration, revocation or cancellation of the license of a grain dealer or warehouse operator;
or
2. The filing of a petition in bankruptcy by a grain dealer or warehouse operator.

A claim shall be filed within a claim period that begins on an incurrence date and ends 120 days after that incurrence date. A claim is not timely unless ~~the claim~~ it is postmarked or delivered within 120 days after the revocation, termination, or cancellation of a license, or the filing of a petition for bankruptcy incurrence.

ITEM 49. Amend rule 21—94.5(203D) as follows:

21—94.5(203D) Claims by depositors where bureau is receiver. In regard to claims by depositors arising against a warehouse operator whose license has expired or has been revoked, ~~terminated~~, or canceled and who has not filed a petition for bankruptcy and where the bureau has been appointed by the court as the receiver of the grain assets of the warehouse, a claim properly filed with the bureau as receiver within 120 days of the license expiration, revocation, ~~termination~~, or cancellation also is deemed to be a properly filed claim against the fund.

ITEM 50. Renumber subrule **94.10(2)** as **94.10(3)**.

ITEM 51. Adopt the following **new** subrule 94.10(2):

94.10(2) Time limitation on claims. A claim shall expire five years after the board determines a claim is payable if the claimant has failed to execute and return the subrogation and hold-harmless documents required by subrule 94.10(1). The fund is not liable for payment of expired claims.